

Montana Water Court  
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**FILED**  
07/10/2023  
Sara Calkins  
CLERK  
Montana Water Court  
STATE OF MONTANA  
By: D'Ann CIGLER  
43B-0815-R-2022  
Lambert, Kathryn  
11.00

MONTANA WATER COURT, YELLOWSTONE DIVISION  
YELLOWSTONE RIVER ABOVE AND INCLUDING BRIDGER CREEK BASIN  
BASIN 43B  
PRELIMINARY DECREE

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CLAIMANT: RSP Properties LLC

OBJECTOR: RSP Properties LLC

**CASE 43B-0815-R-2022**  
43B 46036-00

**NOTICE OF FILING OF MASTER'S REPORT**

This Master's Report was filed with the Montana Water Court on the above stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's finding of fact, conclusion of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days to be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must mail a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

**MASTER'S REPORT**

This claim appeared in the Preliminary Decree with the following remark:

A LATE OBJECTION HAS BEEN FILED TO THE FLOW RATE OF THIS WATER RIGHT CLAIM. IT WILL BE RESOLVED DURING THE ADJUDICATION OF OBJECTIONS TO THE PRELIMINARY DECREE.

The objection was filed in 1994 by then owners of the claim, Peter H. Fonda and Portia C. Fonda. On March 21, 2023 an Order was issued which includes substituting RSP Properties LLC as the objector. On May 5, 2023 RSP Properties LLC filed Documentation To Resolve Objection. The Documentation is viewable in the Court's FullCourt Enterprise case management system.

#### APPLICABLE LAW

A properly filed Statement of Claim for Existing Water Right is prima facie proof of its content pursuant to section 85-2-227, MCA. This prima facie proof may be contradicted and overcome by other evidence that proves, by a preponderance of the evidence, that the elements of the claim do not accurately reflect the beneficial use of the water right as it existed prior to July 1, 1973. This is the burden of proof for every assertion that a claim is incorrect including for claimants objecting to their own claims. Rule 19, W.R.Adj.R.

#### FINDING OF FACT

The Preliminary Decree states that the flow rate is 2.50 CFS. The flow rate should be 2.75 CFS. The late objection remark should be removed as addressed.

#### CONCLUSION OF LAW

The settlement filed by the claimant is sufficient to contradict and overcome the prima facie claim.

#### RECOMMENDATIONS

Based upon the above Finding of Fact and Conclusion of Law, this Master recommends that the Court make the changes specified in the Finding of Fact to correct the Preliminary Decree for this Basin. A Post Decree Abstract of Water Right Claim is served with this Report to confirm the recommended changes have been made in the state's centralized record system.

#### **ELECTRONICALLY SIGNED AND DATED BELOW**

**Service Via Electronic Mail:**

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**POST DECREE**  
**ABSTRACT OF WATER RIGHT CLAIM**  
**YELLOWSTONE RIVER, ABOVE & INCLUDING BRIDGER CREEK**  
**BASIN 43B**

**Water Right Number:** 43B 46036-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:** RSP PROPERTIES LLC  
%KATHLEEN J PATE  
145 RIVER LANDING DR UNIT 301  
CHARLESTON, SC 29492 8612

**Priority Date:** JUNE 1, 1882

**Type of Historical Right:** DECREED

**Purpose (use):** IRRIGATION

**Irrigation Type:** FLOOD

**Flow Rate:** 2.75 CFS

**Volume:** THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

**Climatic Area:** 3 - MODERATE

**Maximum Acres:** 86.00

**Source Name:** DEEP CREEK, NORTH FORK

**Source Type:** SURFACE WATER

**Point of Diversion and Means of Diversion:**

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SWSWNW	29	3S	10E	PARK

**Period of Diversion:** APRIL 15 TO OCTOBER 15

**Diversion Means:** HEADGATE

**Ditch Name:** MAIN DITCH

**Period of Use:** APRIL 15 TO OCTOBER 15

**Place of Use:**

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	8.00		SWNWNW	30	3S	10E	PARK
2	0.50		SENWNW	30	3S	10E	PARK
3	10.00		NESWNW	30	3S	10E	PARK
4	10.00		NWSWNW	30	3S	10E	PARK
5	10.00		SWSWNW	30	3S	10E	PARK
6	10.00		SESWNW	30	3S	10E	PARK
7	7.50		NESENW	30	3S	10E	PARK
8	10.00		NWSENW	30	3S	10E	PARK
9	10.00		SWSENW	30	3S	10E	PARK
10	10.00		SESENW	30	3S	10E	PARK

**Total:** 86.00

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**Remarks:**

THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE SUPPLEMENTAL WHICH MEANS THE RIGHTS HAVE OVERLAPPING PLACES OF USE. THE RIGHTS CAN BE COMBINED TO IRRIGATE ONLY OVERLAPPING PARCELS. EACH RIGHT IS LIMITED TO THE FLOW RATE AND PLACE OF USE OF THAT INDIVIDUAL RIGHT. THE SUM TOTAL VOLUME OF THESE WATER RIGHTS SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

46036-00

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